

SEPA Implementation Working Group Scope of Work, Approach, and Schedule

Goal

The purpose of the SEPA working group is to provide a forum for members of the Climate Advisory Team and other stakeholders and government representatives to develop recommendations to ensure that consideration of climate change is included in the State Environmental Policy Act (SEPA) processes and documents. The recommendations would clarify how, where, and when to best address climate change in the state and local government (referred to as agencies) SEPA processes.

While not completely certain, the Department of Ecology believes, and the co-chairs of this SEPA IWG concur, that SEPA already requires an assessment of a proposal's potential impact on climate change. This includes a description of the proposal's likely effect on emissions of greenhouse gases and how environmental change that has already occurred or is likely to occur in the future as a result of climate change might impact the proposal.

SEPA requires agencies to act "to the fullest extent possible" when assessing the environmental impact of a proposed action. The current SEPA rules include "climate" as an element of the environment that should be included in assessing a proposal's environmental impact. Yet, environmental review documents rarely, if ever, discuss climate change. In other states and nationally, litigation has been initiated challenging SEPA-like environmental review documents and, to our knowledge, every court that has reviewed the question has ruled that NEPA and state equivalents do, in fact, require an assessment of the climate change impacts and implications raised by the proposed project. This kind of litigation has now been initiated in Washington.

Rather than leave this issue to the Courts, the CAT has recommended that a committee of stakeholders be formed to prepare recommendations on changes to SEPA rules, guidance and/or environmental review documents (EIS's; environmental checklist; DNS; MDNS, etc.) to provide clarity and predictability to project proponents and administering agencies regarding how climate change is to be addressed through the environmental review process.

Tasks

There is currently no guidance on how to address climate change under SEPA. The SEPA working group should focus initially on the following questions:

- 1) What is needed, in terms of SEPA rule amendments, including possible changes to the environmental checklist, threshold determination and/or Environmental Impact Statements, and/or policy statements of guidance to provide clarity and predictability in appropriately addressing climate change in the environmental review of project or non-project actions?
- 2) What information or guidance can be provided to help administering agencies quantify and analyze the impacts of greenhouse gas emissions from their actions, as well as the impact of climate change on their actions?

- 3) What guidance should be provided to agencies and project applicants to determine possible mitigation for the effects of the proposal on climate, as well as the impacts of climate change on the proposal?
- 4) What guidance should be provided to agencies and local governments to help determine when substantive SEPA authority might impact the approval or placement of conditions on projects?
- 5) Should the SEPA environmental review process itself be used as an incentive to promote climate friendly actions? For example, should residential development that is consistent with approved GMA comprehensive plans and development regulations and that promotes density, infilling and avoidance of sprawl and commute-dependant communities be exempted from or otherwise expedited under SEPA?

The SEPA working group will produce:

- Recommended policy direction, new agency guidance, proposed revisions to SEPA forms and other appropriate direction regarding how, where and when to identify, quantify, evaluate and mitigate impacts of GHG emissions from actions and projects and impacts of climate change on proposed actions/projects.
- Recommended changes to the SEPA rules and draft amendment language.
- Other policy recommendations crafted to better utilize SEPA itself (and particularly as it applies to land use and transportation decisions) and to improve its use as a tool to reduce emissions of greenhouse gases.

Ecology currently intends to file the draft rule amendment with the state Code Reviser by January 2009, with adoption by May or June 2009

Work Area Descriptions

The overarching goal of the SEPA IWG will be to provide certainty and predictability for the public and private sectors regarding SEPA's requirements and authorizations so that resources will be devoted to effectively addressing climate change impacts rather than litigating about what SEPA requires.

Consistent with the SEPA IWG's goals and tasks, the group will focus its recommendations for SEPA statutory or rule amendments or additional guidance from Ecology on three related but separable areas of SEPA compliance:

1. Procedural measurement and disclosure of climate change impacts,
2. Substantive mitigation of, and adaptation to, climate change impacts, and
3. Leveraging SEPA to encourage "climate friendly" development.

In each of these work areas, the SEPA IWG will specify the requirements of SEPA for:

- Both Project and non-project actions , and
- Both impacts caused by the emissions of "greenhouse gases" and other kinds of impacts caused by the combination of the proposed actions and changing environmental conditions predicted to occur over time as a result of climate change (e.g., impacts on traffic when a proposed roadway becomes submerged by rising sea levels in the future).

The proposed scope for each of the three work areas is described in more detail below.

Work Area 1: Measurement and Disclosure

This area of the IWG's effort focuses on SEPA's traditional processes for identifying, measuring, and reporting environmental impacts and how they will apply to both types of climate change impacts. Elements of SEPA that fall into this category include: categorical exemptions, the environmental checklist, SEPA threshold determinations, and the content of Environmental Impact Statements.

For this category, the IWG will focus on the following:

- *Scope:*
 - What types of projects and non-projects should be assessed? Should there be new or modified categorical exemptions?
 - What types of project-related or plan-related emissions should be included in the environmental review (e.g., direct and/or indirect emissions)?
 - What types of other impacts arising from the combination of project impacts and the project's vulnerabilities to predicted climate change impacts (such as the traffic impacts of the road that would be submerged by rising sea level) should be included in the environmental review?
- *Information collection:*
 - How should the SEPA checklist, EIS and other means of collecting and analyzing information be revised or adopted to gather needed information on project and non-project climate impacts and vulnerabilities?
 - Should standards be specified for what constitutes significant adverse climate change impacts requiring review through an environmental impact statement?
- *Tools:*
 - What tools or resources are available (or should be created) to calculate or assess climate impacts and vulnerabilities?
- *Guidance:*
 - What additional guidance should be provided for project and non-project proponents to understand the scope of SEPA's application to climate impacts, the processes for developing and reporting information, and the tools for assessing climate impacts and vulnerabilities?

Work Area 2: Mitigation and Adaptation

This work area will focus on how state agencies and local governments may exercise authority granted by SEPA to mitigate adverse environmental impacts. As with "Measurement and Disclosure," both projects and non-projects will be considered. Elements of SEPA that fall into this category include:

- Authorizations of state agencies and local governments to require mitigation measures in the SEPA statute and SEPA rules, and
- Substantive policies on climate change impacts and mitigation measures to determine the nature and extent of mitigation and adaptation measures that may or must be required by a state agency or local government.

This work area will also focus on situations where government agencies may be required under SEPA to mitigate the impacts of their own projects or non-project actions.

For this category, the IWG will focus on the following:

- *Scope:*
 - What types of mitigation or adaptation measures can be used to address project impacts or vulnerabilities? To what extent does this need to be determined under SEPA vs. by local governments?
- *Threshold determinations*
 - What are appropriate thresholds or criteria for required mitigation/adaptation?
- *Tools:*
 - What tools or resources are available (or should be created) to quantify reduced impacts from mitigation measures and/or reduced vulnerability from adaptation measures?
- *Guidance:*
 - What guidance should be provided to make the “rules of the game” clear for mitigation and adaptation?

Work Area 3: Leveraging SEPA for “Climate Friendly” Development

This aspect of the IWG’s effort will focus on ways in which SEPA may be used to encourage projects and plans that result in “climate friendly” development (e.g., high density housing close to transit). For example, the IWG will consider:

- Potential SEPA exemptions from some or all SEPA requirements or streamlining of SEPA processes for certain types of “climate friendly” project or non-project actions, and
- Climate-friendly project or nonproject actions that will be deemed to constitute compliance with SEPA’s environmental review and mitigation requirements

For this category, the IWG will focus on the following:

- *Incentives:*
 - What kind of mandatory or incentive-based programs allowing for SEPA exemptions or streamlining should be considered for promoting “climate-friendly” development and climate-friendly programs, such as direct regulation of greenhouse gas emissions, provisions for transferable development rights, and land use plans and regulatory requirements that foster development that minimizes climate change impacts?
- *Qualifying projects:*
 - What kinds of projects, programs, or plans should qualify for this treatment?
 - Coordination with other CAT processes (e.g., transportation, Growth Management Act) to develop and avoid duplication regarding projects, programs, and plans that should qualify for special SEPA treatment?
- *Guidance:*
 - What guidance should be provided to make the “rules of the game” for leveraging SEPA’s requirements or avoiding traditional SEPA compliance clear?

Approach and Products

The SEPA IWG will structure its efforts around the three main areas of work described above:

- Measurement and Disclosure;
- Mitigation and Adaptation; and
- Leveraging SEPA to Encourage “Climate-friendly” Development

Work in each of these areas will proceed roughly in parallel through the following three phases:

Phase 1: Refine the scope and products for each work area. The starting point for this refinement is the description of each of the work areas described above.

- *Products: “work plan” for each of the three areas describing resources and language to be produced*

Phase 2: Develop supporting resources (e.g., tools, checklist, guidance) deemed by the IWG to be critical for making SEPA implementation clear, predictable, and timely.

- *Products: resources as identified and described in work area “work plans”*

Phase 3: Develop proposed statutory or rule amendments.

- *Products: Proposed statutory or rule amendment language as described in work area “work plans”*

As the SEPA IWG develops the scope and materials for each of the three work areas, it will consider:

- Whether the existing SEPA rules, statutory language, and official Ecology guidance documents provide a sufficient level of certainty and predictability on SEPA’s requirements and authorization regarding climate change impacts, mitigation, and alternatives to traditional SEPA compliance;
- Laws, methodologies, and guidance regarding climate change impacts that have been adopted or developed by other states or localities for compliance with SEPA-like laws;
- New approaches for measuring, disclosing, avoiding, mitigating, or adapting to climate change that Washington State might adopt and what other resources and/or approaches might be utilized to enhance the effectiveness of SEPA; and
- Potential amendments of the SEPA rules and, if necessary, the SEPA statute, as well as other potential official guidance from Ecology to provide sufficient certainty and predictability.

Work Flow

Work will proceed through both 1) between-meeting technical work and document drafting and 2) full group discussion and decision-making at in-person meetings and via teleconference.

The between-meeting work will be conducted by members with relevant interests and expertise and by technical staff available as resources for the IWG. Although we will not have formal sub-groups of the IWG, it is very likely that we will have “drafting teams” that work consistently in a particular work area and produce the bulk of the written work.

The full group will review, discuss, and decide upon materials presented at each meeting.

Although it is difficult to predict how it will affect our work flow at this early stage, it is likely that progress on some aspects of the SEPA IWG's work will need to wait for decisions being made by other CAT groups (e.g., transportation IWG, GMA). We will accommodate such issues as they come up.

Meeting Schedule

The IWG will convene, in-person or via teleconference every two to three weeks for roughly five months. Teleconferences will typically last 2 hours, and in-person meetings will be a half or full day. The in-person meetings will generally occur prior to the CAT meetings and will be focused on working sessions to significantly advance document content and make decisions on issues to present to the CAT.

By the September 18 and 19 CAT meeting, the SEPA IWG will have drafts of all products for the CAT. By the October 14 and 15 CAT meeting, the SEPA IWG will have final versions of all of these materials. Based on direction from the CAT, the SEPA IWG may do additional work after the October 14 & 15 CAT meeting with the intent of informing Ecology's rulemaking efforts in early 2009.

The following is the proposed meeting schedule. A more detailed schedule will be distributed to members at a later time.

- May 28/29 Kick-off meeting (in-person)
- Week of June 16 (teleconference)
- Week of July 7 (in-person)
- Week of July 21 (teleconference; prior to CAT meeting)

CAT meeting: July 25

- Week of August 4 (teleconference)
- Week of August 25 (in-person)
- Week of Sept. 8 (teleconference)

CAT meeting: September 18 & 19

- Week of September 29 (in-person)

CAT meeting: October 14 & 15

Context for SEPA IWG Work

The following provide context for the IWG's efforts. These items describe existing work that the IWG may draw from:

- With the passage of ESSB 6001 'Climate change – Mitigating Impacts', and E2SHB 2815 'Creating Framework for Reducing Greenhouse Gases Emissions in the Washington Economy' the legislature acknowledged the environmental impacts of climate change and directed the State to reduce WA's contribution to greenhouse gas emissions.
- The Climate Advisory Team (CAT) and the Technical Working Groups (TWGs) recommended that SEPA be used as a tool for identifying greenhouse gas emissions and mitigation options in decision making, planning processes, and development projects.
- The Preparation and Adaptation Working Groups (PAWGs) recommended that SEPA be used to analyze and address the impacts of climate change on governmental actions and public and private projects.
- Director Manning's recent letter to lead Agencies regarding SEPA and climate change.
- Across the nation many states and local governments are developing environmental policies, regulations and guidance to address climate change through their SEPA like statutes. Some of these actions arose from court challenges. Ecology has determined it is in everyone's best interests to act now to avoid a "policy by litigation" scenario in WA State.

In addition to the above, *ESSB 6580, Addressing the impacts of climate change through the Growth Management Act*: Section 2 of ESSB 6580 directs the Department of Community Trade and Economic Development to work with the WSDOT to reduce VMT through land use modeling and planning strategies. This IWG will not work on those issues, but will keep track of ESSB 6580 activities and products.